INDUSTRIAL INSURANCE

V

THE EMPLOYERS' LIABILITY LAW

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The only forms of strictly legal relief of workingmen in case of incapacity for labor caused by accidents are poor relief and indemnity secured under the law which makes employers liable for damages caused their employees through negligence on the part of the employers. The right to poor relief is not one which can be enforced by legal process, and when such aid is granted it is insufficient, humiliating, and destructive of self-respect, so that it is dreaded and hated by every man who is not already pauperized in spirit. We have here to outline the chief facts in relation to the rights of injured workingmen under the liability law.[1]

I. THE LAW

The basis of all legislation and "judge-made law" in this field is the ancient English common law governing relations of masters and servants. According to that law the employee upon entering service was supposed to assume the ordinary risks of the occupation—the doctrine of "assumption of risk." It was thought that a free man entering into a contract of service would

[1] References: F. J. Stimson, *Handbook to the Labor Law,* 1895, pp. 161 ff.; *Report of the Committee on Relations between Employer and Employee,* Massachusetts (1904); *Tenth Special Report of the Commissioner of Labor,* Labor Laws (1904), and later *Bulletins* of the Bureau of Labor; S. D. Fessender, "Employers' Liability in the United States," *Bulletin of the Department of Labor, No. 31,* November, 1900; E. Freund, *Police Power,* secs. 322, 633; C. B. Labatt, *Commentaries on the Law of Master and Servant* (1904); W. G. Clay, *Abstract of the Law of Employers' Liability and Insurance against Accidents* (1897); *Annual Report of New York Labor Statistics* (1899), Vol. XVII, pp. 555–1162; C. Reno, *Law of the Employers' Liability Acts* (2d ed., 1903); *Industrial Commission, Report,* Vol. V, pp. 76–87, Vol. XVII, pp. 970–1135, Vol. XIX, pp. 932–39; *Bulletin of the Department of Labor,* No. 40 (Weber); H. A. Schaffner, *Railroad Coemployment* (1905).

usually be acquainted with the dangers attending that occupation and would have no claim upon his employer if he were injured. If, however, there were extraordinary dangers which should be known by the manager but not by the employee, such risks were not supposed to be assumed. It would be the duty of the employer to make these unusual dangers known to the workman, and if he failed to do so and harm resulted, the employer would be liable.

Another famous doctrine was the "fellow-servant" interpretation. According to this principle the employer could not be required to pay idemnity to an injured workman if the accident and hurt came from the carelessness of a companion in the service. This doctrine is of comparatively recent origin. About the year 1840 this rule was developed by courts in England and in the United States and employers were exempted by judicial decisions from payment of damages where the fault lay with a fellow-workman. Nor was this unnatural, if one starts from the idea of personal culpability; for in no proper sense is an employer directly to blame for an injury caused by another. The fact that the principle works hardship indicates a fault in the law itself, not in its logical application.[2]

There is another aspect of the case, however, which introduces doubt: the employer is responsible for his agents, since he selects them and may be negligent in this selection and in giving them power to control the action and fortunes of subordinated workmen. In this view the negligence of a fellow-servant who is in position of director of others is the fault of the original manager and proprietor. Many decisions have turned on this fact and made the employer liable for indemnity if the fellow-servant was unfit for his position, incompetent, drunken, or negligent so as to cause injury. It is not strange that judicial opinions should differ and that the course of legislation should be crooked. Thus we have in one direction the language of Justice Field (C., M. and St. Paul Railway Company vs. Ross, 1884, 112 U. S.,

[2] Pollock, *Law of Torts*, 7th ed., p. 96; Field, U. S. Supreme Court Reports (112 U. S.), p. 3867.

377); in holding that a corporation should be held responsible for the acts of a servant exercising control and management:

> He is in fact, and should be treated as, the personal representative of the corporation, for whose negligence it is responsible to subordinate servants. This view of his relation to the corporation seems to us a reasonable and just one and it will insure more care in the selection of such agents, and thus give greater security to the servants engaged under him in an employment requiring the utmost vigilance on their part, and prompt and unhesitating obedience to his orders.

The United States is the only country now where this labored dispute has any significance; for with the introduction of the laws relating to the absolute liability of employers without regard to negligence and with the compulsory insurance laws the idea of negligence of fellow-servants has no meaning.

It is the duty of employers, under the common law to provide in a reasonable way such machinery, buildings, and appliances as will insure safety. Only ordinary care is obligatory, and the law does not demand the impossible in asking absolute security against harm, nor even the use of the most recent and costly devices, but only such as are found in a well-arranged establishment. If a defect is known to exist the employer is not held liable, although he may be required to give indemnity if it is shown that the injured workman has repeatedly called attention to the danger and asked for protection.

Another rule is that of "contributory negligence;" an injured workman in order to recover damages must prove that he did not bring harm to himself by his own carelessness. The employer is under obligations to instruct a new employee in regard to any special dangers of the occupation, and this requirement is more strict where the employee is young, inexperienced, or of inferior mental capacity.

According to the common-law rule a difference is made between the case where the employee is instantly killed and that where he survives for a time. In the former case the legal representatives of the victim cannot recover damages from a negligent employer. This rule has been modified in the statutes of some states. It is said that an action for damages on account

of homicide could not be maintained prior to Lord Campbell's Act in 1846 (9 and 10 Victoria, C. 93).

A few of the states have redefined the main provisions of the common law. In some states only corporations, and in others all employers, are liable for injuries to employees caused by defects in machinery or plant or by negligence of employers or their representatives.[3] California and Montana, which have adopted the general codes prepared by the late David Dudley Field, attempt to recast the common law in still greater detail.[4]

Gradually the common law has been displaced or profoundly modified by statutes as well as by judicial interpretations. On the whole the changes have been in the direction of making the law more severe for the employer and to extend the protection of the workingmen. In order to counteract the tendency among employers to induce or require their employees to release them from liability by a contract clause in the agreement to hire, some states have enacted statutes making it illegal to make such contracts; but the courts have annulled them even in the absence of express statute.

In order to correct the injustice of the common law which denied indemnity in case the workman was instantly killed, a law has been passed, as in Massachusetts, securing for the survivors right of action in a case where such right would have existed had the person lived for some time after the accident. The amount which can be recovered may or may not be fixed by the statute.

The Employers' Liability Act of Massachusetts, as summarized by the commission of 1903, may be taken to represent the effort of legislators to extend the right of employees to recover damages. According to this statute employees may recover for any defect in the condition of the ways, works, or machinery of the employer caused by negligence of the employer or of some one in his employ whose duty it was to see that the same were in proper condition or properly repaired. Employees may recover for the negligence of a superintendent, or of one

[3] Mass., 1894, 499; Col., 1893, 77; Ind., 7083; Ala., 2590.

[4] Stimson, *op. cit.*

acting as superintendent under the authority of the employer. On railroads the company is liable to the employee injured through the negligence of a person having the charge of any signal, switch, locomotive, engine, or train. In the event of the death of the employee his legal representatives have the right to recover damages against the company. If death was not instantaneous, or was accompanied by conscious suffering, the widow, and if no widow the next of kin, dependent on the employee at his decease, may recover damages against the company. If there are two suits, one by the legal representatives and one by the widow or next of kin, the total amount recovered shall not exceed $5,000, to be apportioned by the jury. In the laws of some states the sum which may be recovered is not fixed or limited, but left to the discretion of the jury. Employees themselves suing under this act can recover an amount not exceeding $4,000. In any case under this act resulting in death, which follows instantaneously or without conscious suffering, the amount recoverable is not less than $500 and not more than $5,000, to be assessed according to the degree of negligence of the person for whose negligence he is made liable. Notice must be given the employer within a given period after the accident. Employees working for subcontractors upon the machinery, ways, works, or plant of the employer have the same rights against the employer as have other employees. To have right to recover indemnity the employee must have given due notice of the defect which caused his injury. An employer who has contributed to certain insurance funds for the benefit of injured employees may prove in mitigation of damages recoverable by an injured employee under this act, the proportion contributed by him to the benefit received by such employee. This act does not apply to injuries caused to domestic servants or farm laborers by fellow-employees.

Contracting out.—Even without statute it would appear to be illegal to make a contract releasing the employer from his common-law responsibilities; but some states have enacted laws expressly nullifying such contracts, with the purpose of preventing employers from using their superior power as employers to

make such agreements the basis of granting employment.[5] In some states such contracts are void only where the injuries arise from the negligence of the employer or of someone who represents him.[6]

II. CRITICISM OF LIABILITY LAWS

It is almost universally agreed among persons of experience that the liability laws, whether common or statute, are not satisfactory to either employers or to the employed. On the one hand we hear complaints from the employers who affirm that legislatures, under pressure from trade unions, are steadily making statutes more drastic and severe upon employers and more favorable to employees; that juries award verdicts without regard to justice, measured more by what the defendant can pay than by the earning power of the person who has suffered loss; that employees are more eager to resort to litigation and persistent in pressing suits; that dishonest lawyers take advantage of the situation and for contingent fees urge injured workmen to prosecute claims, many of which are without foundation in justice; that to protect themselves from ruinous risks they are compelled to pay enormous sums to casualty companies for premiums, and even then cannot afford to pay premiums large enough to carry the entire risk; that employers of moderate means may be crippled or utterly ruined by the awards of juries and by the costs of litigation.

On the other hand the employees offer objections from their point of view. They assert that they are denied speedy trial in courts, owing to the crowded condition of dockets and the tricks of attorneys of defendants; that in addition to their employers they must fight powerful insurance companies who resist their claims to the bitter end; that these companies are even more pitiless than the employers; that an ordinary workman has no chance when pitted against the shrewd claim agents, expert attorneys of employers, and insurance companies; that before they can

[5] Ohio, 1890, p. 149; Ind., 7083; Tex., 1891, 24; Wyo. Const., 10, 4, 1891, 28; Flor., 2346; in Ohio the law applies to railroads only.

[6] Mass., 1894, 508, 6; Ala., 2590; Minn., 1887, 13.

hope to recover damages years of deprivation and misery must pass while the suit is appealed from court to court and their rights are denied; and that even if they are fortunate enough to recover indemnity, after long waiting and suffering, the costs of litigation have consumed most of the award. Meantime they have been kept out of the interest on what was justly due them. An extreme instance is known to the writer where a great corporation, after twenty-one years of resistance was finally compelled to pay, but meantime the interest which they retained was equal to the full amount of the award to which the injured man had a right from the moment he was hurt.

III. EMPLOYERS LIABILITY INSURANCE COMPANIES

A natural product of the working of liability laws, under modern economic conditions, is the rapid and enormous growth of private companies which undertake to relieve employers from the dangers and burdens of lawsuits instituted by injured workmen or by the heirs of those killed in industrial accidents. We have said that this form of insurance is a natural outgrowth of the situation, artificially created by the law, an inevitable effort to protect the solvency of employers against the ruinous effects of damage suits. The employers offer a defense of their action which is relatively just and yet sounds like an indictment of the law itself. They say, that without such insurance their business credit might be hopelessly compromised; that a certain class of lawyers, known as "ambulance chasers," lurk about the neighborhood of works where accidents are frequent with the hope of securing clients by offering their services without hope of fees unless a suit is won for the poor plaintiff, in which case he takes the lion's share of the award, while the workman receives a paltry sum. In sheer self-defense they resort to the insurance company for protection. When a workman refuses to make settlement without litigation they feel justified in turning him over to the tender mercies of the foreign corporation and let them fight out the battle. Even so the employer is not entirely free from danger, since in practice he does not feel able to pay the premium required to purchase entire immunity, and sometimes, as in a

case where the award is $20,000 and the policy guarantees only $5,000, the employer may be severely worsted after all.

The extent and cost of employers' liability insurance may be seen from the following figures. In the five years between 1894 and 1898 ten companies received in premiums from employers $19,401,511 and paid out in losses $9,382,689; the premiums received were more than twice the payments for protection.

How much of this $9,382,689, after paying their lawyers, ever reaches the workingmen for whom the law intended it should be paid?[7] In the state of Illinois, in one year, 15 of these companies collected in premiums from employers $1,825,467.51 and paid claims to the amount of $876,940.95.[8] It must not be supposed from these figures that the insurance companies are reaping inordinate profits from these transactions, and we may accept their explanation of the figures that the expenses of doing business are actually extremely great. It is claimed by friends of the companies that the rate of commission alone for securing business will average between 25 and 30 per cent., to which must be added salaries and traveling expenses of special agents; rent and other expenses of branch offices; cost of surveys and inspections; home office expenses; rent, clerk hire, and a multitude of other small charges; so that the expenses average about 50 per cent. of the premiums, and the margin of profit left is about 10 per cent. of receipts.[9] When we compare this enormous cost with that of German compulsory accident insurance, or even with that of French syndicates or private companies under recent laws, we can see that the industry of this country is subjected to a burden which is beyond reason; and it does not seem possible that a large body of shrewd business men will very long tolerate such a law and the conditions which it creates.

This form of insurance began to be used about 1887, and the volume of business increased from $150,000 in that year to $14,-

[7] *Report of Industrial Commission,* Vol. VII, p. 78.

[8] *Thirty-seventh Report of Insurance Superintendent of Illinois,* 1905, p. xvii.

[9] W. F. Moore, "Liability Insurance," *Insurance,* published by Annals of American Academy, pp. 328, 330.

700,000 in 1904; but these figures include all kinds of liability policies excepting steam boiler policies.

IV. INDIRECT CONSEQUENCES

One effect of the employers' liability laws, in connection with other motives, is the very common custom of paying the expenses of medical care after an accident, and even of continuing the wages or part of them during temporary incapacity. How far this custom extends it is impossible to determine, but correspondence proves that it is quite wide and rapidly growing. One example may be cited. In the state of Michigan during the year 1905, according to the report of the Bureau of Industrial Statistics, reports were secured on this subject in relation to more than 400 cases of accidents in factories and workshops in the state. The average duration of disability was 33 days. Out of 348 injured workmen 172 of them received their wages during the time of disability.[10] Only in part is this beneficent action due to purely philanthropic motives; probably we must suppose the constant pressure of fear of damage suits on the part of employees urged on by lawyers in quest of contingent fees. As quickly as possible after an accident the representatives of the firm visit the wounded man, show him kindly attention, provide for urgent needs, or send him to a hospital. In due time, not always immediately upon the heels of the conciliating gift, comes the legal agent of the firm with a document for the employee to sign giving a full release from all liability in consequence of any possible neglect on the part of the employers. As a rule there is no legal claim, and the contribution is a pure gratuity, but experience shows that such "smart money" has a soothing and conciliatory effect upon the mind of the injured man. Furthermore there is economic advantage in securing prompt surgical and medical care, because the chances of certain and speedy recovery of a wounded workman are increased by such measures. Of course the employee profits by the custom. But he has no legal claim, and the charity feature is objectionable and irritating.

[10] *Twenty-third Annual Report of the Labor and Industrial Statistics of Michigan,* 1906.

The establishment of benefit clubs in factories and shops, with or without subsidies from the employers, as described in another chapter, is often largely due to the natural and proper desire of employers to avoid the irritation which increases friction and so litigation. Here also the perception of the value of timely and competent medical care in restoring and conserving the industrial efficiency of workers has much to do with the favorable attitude toward such organizations. The humane motive must also have its place. It has been asserted, though without adequate data for proof, that many of the great railroads and other corporations already, and without legal requirement, pay out in benefits to wounded workmen all that they would be required to do under the British Compensation Act. All of these facts go to show that, under the liability law, the cost and burden of insurance is already quite heavy on employers, and that the burden would for many of them not be greatly increased if the compulsory insurance of workingmen were at once introduced. But the measures just described are without true legal authority and are for this reason not socially equal nor fairly distributed. It is natural that some more satisfactory legal method should be sought.

V. THE MASSACHUSETTS BILL

On January 13, 1904, a very competent committee recommended to the legislature of Massachusetts a modified form of the British Compensation Act of 1897. The legislature had, on June 5, 1903, instructed the governor to appoint this committee of five persons to make recommendations for laws on the relations between employer and employee. The text of the bill offered by them was printed in their report. This bill was rejected and nothing was done, and yet the discussion thus awakened served an important educational purpose and public opinion was strongly directed to the problem.

Serious and perhaps insurmountable legal objections have been urged against this bill. The proposed law has been summar-

ized and criticized very clearly and strongly by Professor E. Freund:[11]

> The bill makes every employer belonging to one of the classes specified by it liable for any personal injury happening to an employee while performing duties growing out of or incidental to his employment, unless the injury is due to the employee's own wilful or fraudulent misconduct. The employment must be on, or in, or about a railroad, a street railway, a factory, a workshop, a warehouse, a mine, a quarry, engineering work, or any building which is being constructed, repaired, altered, or improved by means of a scaffolding, temporary staging or ladder, or being demolished, or on which machinery driven by steam, water, or other mechanical power is being used for the purpose of the construction, repair, or demolition thereof. The act provides for the payment of lump sums in case of death, and for weekly payments in case of total or partial incapacity. Maximum amounts are fixed, and the weekly payments are subject to review from time to time. All questions arising under the act as to liability to pay, or amount or duration of compensation, are to be settled by arbitration. The employee has his option to proceed independently of the act to recover damages, where he has a cause of action by common law or by other statutes.

Professor Freund and others have raised the following constitutional objections to this form of law: (*a*) The bill makes no provision for trial by jury, leaving the settlement in disputed questions to arbitration; (*b*) There seems to be no principle of classification in determining the occupations included in the bill or excluded from its operations; (*c*) It is objected that this bill lays an unjust and intolerable burden on the employer of small means and income, making his liability absolute although his ability to meet the demand in case of serious accident is not comparable with that of rich corporations. All these errors can be corrected in a revised bill. "The necessary provision for jury trial would probably not seriously interfere with the operation of the act; a more intelligible principle of selection of employments could easily be found; and, above all, employers on a small scale should be relieved."

A somewhat different line of objections has been brought forward by other legal authorities. Thus it has been attacked on the ground that it is class legislation and casts upon employers

[11] *Green Bag*, February, 1907, pp. 80 ff.

of certain selected classes a burden not imposed on others. In proof and illustration of this contention the decision of the Supreme Court of Illinois is cited:

> Liberty, as that term is used in the constitution, means not only freedom of the citizen from servitude and restraint, but is deemed to embrace the right of every man to be free in the use of his powers and faculties and to adopt and pursue such avocation or calling as he may choose, subject only to the restraints necessary to secure the common welfare.[12]

These cases show that legislative enactment cannot deprive a man of his right to pursue his calling in his own way so long as he does not encroach upon the rights of others. As an example the case is cited where a statute prohibiting contractors to allow their employees to work more than eight hours a day on public work was held unconstitutional.[13] It is affirmed, in the same course of argument, that the police power of the state cannot be made to cover legislation not necessary to the health and safety or welfare of the community. One might be justified in replying to this argument that it is precisely the health, preservation, and welfare of the people which is the object of this legislation.

Another objection to the compensation law is based on the idea that, if its enactment meant the repeal of the right to secure redress for injury due to the employers' negligence, it would be unconstitutional because it would deprive the employee of a remedy which he now has under the common law. This form of the argument has much weight with employees and hinders the progress of progressive legislation in the direction of insurance. It would be amusing if it were not so tragically serious to hear what legal principle is quoted in this connection; the splendid periods of the Bill of Rights are introduced to give solemn weight to the argument for the common law as against modern insurance laws which offer a vastly more adequate remedy not only in case of negligence but in all cases of accidents. It sounds like sarcasm to quote these words and then bring them into connec-

[12] Braceville Coal Co. v. People, 147 Ill., 660; Bassette v. the People, 193 Ill., 344; Powell v. Pennsylvania, 127 U. S., 678; Allgegyer v. La., 165 U. S., 578.

[13] Bailey v. the People, 190 Ill., 28.

tion with the daily facts of life in any industrial city of this country. The fundamental ethical principle is indeed worthily expressed:

> Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property, or reputation. He ought to obtain it by law, right, and justice freely and without being obliged to purchase it, completely and without denial, promptly and without delay.

This is the sublime doctrine of our law; but what is the brute fact familiar to the very judges who cite these sonorous phrases in instructing juries and rendering awards? Every one of them knows, and many of them confess with shame, that the actual working of the law is in constant and notorious contradiction with every phrase; in practice there is burdensome cost to the workman who sues, and he must pay his attorney perhaps half of the award to conduct his suit; the delay leaves the disabled man for at least two years without resources, although the law gives him a right to instant succor; the issue is not certain, but a mere gambler's chance; and in the vast majority of cases, that is those not traceable to negligence of the employer, yet due to the occupation itself, the workman has not even the promise of legal relief. The situation has a natural tendency to make every workman regard laws and courts as his natural enemies, and this has really been the effect, until there is positive hostility to these salutary institutions. There is no cure for this hostility in quotations from venerable documents to which actual experience gives the lie direct.

Beneath the juristic objections are certain economic difficulties which give meaning to the legal criticism of the compensation or absolute liability principle. These objections were successfully urged by the manufacturers of Massachusetts and were influential in the defeat of the bill before the legislature. In the United States there is entire freedom of trade between states and competition is unrestricted by state barriers. The employers, assuming that the cost of insurance is a financial burden or that compensation without reference to negligence would be, declare that the premiums for insurance would handicap the employers of the state which should adopt the law in

their competition with employers in similar lines in other states. It is difficult to prove that this objection is without weight. Elsewhere the various aspects of this problem are considered, but the difficulty if not impossibility of securing national and thereby uniform and equal requirements makes a satisfactory solution very remote.

VI. EFFORTS TO FIND A WAY OUT

There are some encouraging aspects of the situation. It will still be possible, under judicial rulings, to make insurance contracts of a certain kind which may develop a system of voluntary protection much more satisfactory than anything yet known. It is quite clear that an employer under the law may make a contract with his employees which will release him from common law liabilities in cases where the injured employee accepts the terms after the accident. But it is not yet clear that an employee can contract out of his rights as a condition of employment or even in advance of actual injury.[14] Insurance arrangements of the relief departments of the railroad companies are on the basis of these legal principles. In the bill offered by the Industrial Insurance Commission of Illinois in 1907 another method was recommended: to offer to employers who would contribute at least half the cost of accident insurance immunity from all other liabilities, in case they could induce their employees to sign a contract to accept these terms. It was thought by the commission that the freedom from uncertain liabilities and danger of vexations and costly litigation would be inducement enough for most important employers to adopt this course without further legal constraint. On the other hand it was hoped that the employees would see it to be to their interest to agree to such a contract since they would thus be assured of a certain indemnity or benefit in all cases of injury, whether there was show of cause under the plea of negligence or not, and thus they would have absolute protection in all forms of disability without losing employment and without paying half or more of rare awards for lawyers' fees. It is not yet known

[14] See 77 N. E. Rep., p. 248; 169 Ill., 312.

whether the employees will take this view of the matter, nor what the legislature will do, nor what the courts would do in case a law of this kind were put to test. But the Commission was advised by some of the most competent authorities in the country that the essential features of the bill were legally and actuarially sound and would, if accepted in good faith, relieve the situation and be a substantial benefit to employers, employees and to the general public. If this is true the idea will yet be tried in some states and have a chance to prove its worth. The Illinois bill left the method of insurance optional with the contracting parties, that is with the employers; and the employer might select a casualty company to provide the machinery for protection, or might under suitable conditions create his own insurance fund, or might join with others in the formation of a mutual insurance association. It would be unwise to exclude casualty companies from this business in the present situation and equally unwise to give them a monopoly of the business.

In the year 1899 an effort was made in New York to introduce some insurance measure, but it failed on account of the contemporaneous demand for more stringent liability law. The bill offered included the British principle of absolute liability and compensation in all kinds of accidents.[15]

In the year 1902 Senator David J. Lewis introduced into the legislature of Maryland a bill intended to encourage or practically compel employers to provide insurance for their employees in certain dangerous occupations. There was in the law a drastic provision extending the scope of liability, and then the employer was permitted to avoid this liability by paying given sums to the State Insurance Commissioner for the creation of a fund out of which a death indemnity for a thousand dollars should be paid. The law was passed and a number of death benefits were paid out by the Insurance Commissioner. It was declared unconstitutional in an inferior court on the ground that the law gave judicial powers to an administrative officer. No case has been carried up to the Court of Appeals and the final test has not been applied. The author of the bill thinks that the

[15] See article of M. M. Dawson in *Railway Age*, 1904, p. 415.

indifference of employers to the law was due to the fact that the number of cases attributable to negligence is so small that freedom from liability under that clause is not sufficient motive to induce them to go to the trouble to insure their employees.

In the meantime it is interesting to study the growth and advance of instructed minds on this subject as illustrated in various messages of President Roosevelt. He seems to have uttered his first plea in connection with an urgent request to Congress to grant disability and old-age pensions to members of the life-saving crews along the rivers and coasts. In his message of December 3, 1906, he goes farther and reaches the ground of the British compensation act of 1897:

> Among the excellent laws which the congress passed at the last session was an employers' liability law.[16] It was a marked step in advance to get the recognition of employers' liability on the statute books, but the law did not go far enough. In spite of all precautions exercised by employers there are unavoidable accidents and even deaths involved in nearly every line of business connected with the mechanic arts. This inevitable sacrifice of life may be reduced to a minimum, but it cannot be completely eliminated. It is a great social injustice to compel the employee, or rather the family of the killed or disabled victim, to bear the entire burden of an inevitable sacrifice. In other words, society shirks its duty by laying the whole cost on the victim, whereas the injury comes from what may be called the legitimate risks of the trade. Compensation for accidents or deaths due in any line of industry to the actual conditions under which that industry is carried on should be paid by that portion of the community for the benefit of which the industry is carried on—that is, by those who profit by the industry. If the entire trade risk is placed upon the employer he will promptly and properly add it to the legitimate cost of the production and assess it proportionately upon the consumers of his commodity. It is therefore clear to my mind that the law should place this entire risk of trade upon the employer. Neither the federal law nor, as far as I am informed, the state laws dealing with the question of employers' liability are sufficiently thoroughgoing.

Still more recently in a speech at the Jamestown Exposition, June 11, 1907, President Roosevelt has been even more explicit,

[16] This law has been declared unconstitutional by two courts and affirmed by one federal court. Judge Evans, in Kentucky, *in re* United States v. J. M. Scott, 1906, declared adversely. Until a case has been carried up to the Supreme Court the value of the law is in doubt.

and published the opinions which no doubt have long been waiting in his fertile mind for the right moment for utterance in a responsible way: "Workmen should receive a certain definite and limited compensation for all accidents in industry, irrespective of negligence." This doctrine he would have Congress apply at once in statutes governing railroads; no doubt with the hope that state legislatures would speedily follow the example set by the federal legislature.